

SPECIAL USE PERMIT AMENDMENT

FILE NO.	H20-023
LOCATION OF PROPERTY	2066 South 10th Street (Northeast side of South 10th Street, approximately 1,900 feet northwesterly of Tully Road)
ZONING DISTRICT	Light Industrial
GENERAL PLAN DESIGNATION	Heavy Industrial
PROPOSED USE	Site Development Permit to allow the installation of a 6.83 to 10-foot high electric security fence inside an existing perimeter fence on an approximately 3-gross acre site
ENVIRONMENTAL STATUS	Exempt per CEQA Guidelines Section 15303(e) for Accessory Structures
APPLICANT ADDRESS	Carol Bausinger 550 Assembly Street, 5th Floor Columbia, SC 29201
OWNER ADDRESS	Scimeca Pryor LLC 56 Maplewood Drive San Jose, CA 94901

FACTS AND FINDINGS

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts and findings regarding this proposed project:

1. **Project Description.** A Site Development Permit to allow the installation of a 6.83 to 10-foot high electric security fence inside an existing perimeter fence on an approximately 3-gross acre site.
2. **Site Description and Surrounding Uses.** The subject site is a construction equipment and tool rental company. The site is occupied by a building, a storage structure in the front and outdoor storage yard at the rear and the side. The site is surrounded by construction material companies.
3. **General Plan Consistency.** The subject site is designated **Heavy Industrial** on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan. The project consists of the installation of the electric fence and does not change the existing industrial use on site.

4. **Zoning Conformance.** The project site is located within the LI Light Industrial Zoning District. Section 20.100.610 of the City of San José Municipal Code states that a Site Development Permit is required prior to the issuance of any building permit for erection, construction, enlargement, placement or installation of a building or structure on any site.
 - a. **Use:** The proposed electric fence is incidental to the existing commercial/industrial use.
 - b. **Setback:** Front-minimum 15 feet; Side/rear-no requirements; The proposed fence has a minimum rear/side setback of 6 inches. Within the 15-foot front setback area, the proposed fence height is 6.83 feet, which is not subject to the minimum 15-foot front setback requirement pursuant to Section 20.200.1240 which defines a “structure” as anything except a fence less than seven feet in height, which is constructed, erected or placed on a site, or under the ground or is attached or affixed to something having a permanent location on or under the ground.
 - c. **Height:** Maximum 50 feet. The proposed security fence is up to 10 feet in height.
5. **Industrial Design Guidelines:** Along the front and side property lines that are within 15-foot front setback area, the proposed electric fence height is 6.83 feet and is behind the existing 6-foot high fences. The electric fences that are more than 15 feet from the front property line are 10 feet in height. The electric fence consists of structural poles four inches in diameter, non-structural poles one inch in diameter, and horizontal wires spaced at about 6 to 8-inch intervals on the top portion. Only the top portion of the fence will be visible as this 6.83 to 10-foot high fence is located within and behind the existing 6 to 8-foot high perimeter fence. It conforms with the Industrial Design Guidelines in that it is open in appearance as described, the style of the fence is not among the inappropriate fence list in this Design Guidelines and it has minimal visibility from the street.
6. **Environmental Review.** Under the provisions of Section 15303 New Construction or Conversion of Small Structures of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the Site Development Permit is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. CEQA Guidelines Section 15303(e) applies to accessory structures including fence.

The project only involves the installation of a 6.83 to 10-foot high electric security fence 6 to 12 inches within and behind an existing 6 to 8-foot high perimeter fence. No other physical improvements to the site and no physical changes to the existing buildings are proposed. Therefore, the project would not have an unacceptable negative affect on adjacent properties regarding noise, vibration, dust, drainage, erosion, stormwater runoff, and odor and is considered exempt in accordance with CEQA Guidelines Section 15303(e) for accessory structures.
7. **Site Development Permit Findings.** Section 20.100.630 of the San Jose Municipal Code establishes the following required findings for issuance of a Site Development Permit:
 - a. The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and Area Development Policies.

Analysis: As described above, the project is consistent with the General Plan. The project is not located in any Specific Plan or development policy areas.

- b. The Site Development Permit, as approved, conforms with the Zoning Code and all other provisions of the San Jose Municipal Code applicable to the project.

Analysis: As discussed above, the proposed project conforms to the development regulations established for the LI Light Industrial Zoning District in that the project conforms to the use, setbacks, height requirements of this Zoning District.

- c. The Site Development Permit, as approved, is consistent with applicable City Council Policies, or counterbalancing considerations justify the inconsistency.

Analysis: The project is in compliance with Public Outreach City Council Policy. A development sign has been posted on the site and the project has been noticed for public hearing to a radius of 500 feet from the project site. There are no other specific City Council policies for this type of project.

- d. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

Analysis: As discussed above, the project only includes the installation of a 6.83 to 10-foot high electric fence about 6 to 12 inches within and behind the existing 6 to 8-foot high perimeter fence. There is sufficient open space separating all structures and uses. The proposed fence does not affect the on-site circulation and does not change the interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site.

- e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

Analysis: The proposed project does not alter the existing building appearance and does not significantly change the appearance of the existing fence and gates. The proposed 6.83 to 10-foot high electric fence is about 6 to 12 inches behind the existing 6 to 8-foot tall perimeter fence. The electric fence along the front property line is 6.83 feet in height and is behind an existing 6-foot tall fence along the front property line. This electric fence is open in appearance in that it consists of structural poles four inches in diameter, non-structural poles one inch in diameter, and horizontal wires spaced at about 6 to 8-inch intervals on the top part.

- f. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: As discussed above, the project only involves the installation of a 6.83 to 10-foot high electric security fence 6 to 12 inches within and behind an existing perimeter fence. No other physical improvements to the site and no physical changes to the existing buildings are proposed. Hence the project would not result in an unacceptable negative affect on adjacent

properties. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), which allows for the construction and location of limited numbers of new, small facilities or structures, this project is found to be exempt from the environmental review requirements.

- g. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

Analysis: The site is enclosed by perimeter fence and a building in the front. Outdoor activities are not visible from South 10th Street because there is an existing 6-foot high fence along the front property line. As discussed above, the project only involves the installation of a 6.83 to 10-foot high electric security fence 6 to 12 inches within and behind the existing perimeter. No other physical improvements to the site are proposed.

- h. Traffic access, pedestrian access and parking are adequate.

Analysis: The site is accessible by a driveway from South 10th Street, a four-lane street with a left-turn lane in the middle. Sufficient parking and traffic capacity are available for the existing use on-site. Pedestrian access to the building is from the driveway and the front yard. The project will not result in changes of the existing traffic access, pedestrian access, and circulation.

In accordance with the findings set forth above, a Site Development Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Permit by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically four (4) years from and after the date of issuance hereof by the Director, if within such time period, a Building Permit (for foundation or vertical construction) has not been obtained or, if no Building Permit is required, the use has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.

3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Conditional Use Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Building Permit.** Obtainment of a Building Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions.
5. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by permittee shall constitute acknowledgement of receipt of notice by permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
6. **Conformance to Plans.** The development of the site shall conform to the approved Site Development Permit plans entitled, "H & E Equipment at 2066 South 10th Street, San Jose, CA 95112 " dated September 8, 2020, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
7. **Use Authorization.** This Permit allows the installation of a 6.83 to 10-foot high electric security fence inside an existing perimeter fence on an approximately 3-gross acre site.
8. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
9. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
10. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.

11. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.
12. **No Sign Approval:** Any signage shown on the approved plan set are conceptual only. No signs are approved at this time. Any additional signage shall be subject to the review and approval by the Director of Planning through a subsequent Permit Adjustment.
13. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
14. **Revocation.** This Permit is subject to revocation for violation of any of its provisions or conditions.
15. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
16. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction.
17. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
18. **Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
19. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
20. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
21. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, **H20-023** shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - c. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.

22. Fire Department Clearance for Issuing Permits. Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Fire Department:

- a. *Security Devices (Electric-Security Fence)* – Any security device or system that emits any medium that could obscure a means of egress in any building, structure or premises will be prohibited, per 2019 CFC Section 316.5. Permittee shall provide a means of shutting off the power to the electric-security fence at entry location, to facilitate site access by the Fire Department and/or Police.
 - i. Provide Knox Box with an emergency power off (EPO) switch installed within, at the entry gate to shut-down power to the entire electric-security fence. This is in addition to the key to open the gate.
 - ii. And a clear sign shall be provided to indicate that shut-down of the electric-security fence inside this box.
- b. *HAZMAT.* A Hazardous Materials Plan Review may be required to determine if the type and quantity of hazardous material is acceptable per code.
- c. *Lock Boxes.* The project development shall provide lock boxes to the satisfaction of the Chief Building Official and Fire Chief. Refer to the following documents.
<https://www.sanjoseca.gov/Home/ShowDocument?id=9303>
<https://www.sanjoseca.gov/Home/ShowDocument?id=9301>

23. Revocation, Suspension, Modification. This Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **2nd** day of December, 2020

Rosalyn Hughey, Director
Planning, Building, and Code Enforcement

Deputy